

POLICY DIRECTIVE 04-211

**TO: ALL JUSTICES OF THE PEACE
ALL JUSTICE OF THE PEACE CIVIL COURT CLERKS**

**FROM: PATRICIA W. GRIFFIN
CHIEF MAGISTRATE**

**RE: HANDLING OF POST-JUDGMENT PER DIEM FOR USE OF RENTAL
UNITS**

DATE: JANUARY 27, 2004

The handling of requests for post-judgment per diem payments for use and occupancy of a rental unit¹ following a judgment of possession has varied from county to county. This policy directive establishes a uniform method for addressing these requests as follows:

1. The plaintiff should request a per diem award in the complaint.
2. When awarded, a set amount to be paid per diem should be specified in the judgment order so that the amount can be calculated when the number of days is known.
3. The question has been raised as to whether the judgment should be amended once the total amount of the per diem award is known to include that amount. Caselaw and the Court Rules indicate that the judgment should not be amended for that purpose. Because the amount owed for per diem can be calculated in accordance with a mechanical formula, a judgment specifying the amount which is to be paid per diem establishes a final judgment. *Cf. Buchanan v. United States*, 82 F. 3d 706, 708 (7th Cir. 1996) (stating

¹ Statutory provision for per diem amounts is made in 25 *Del.C.* § 5715(d) which states in pertinent part:

Plaintiff may recover, by an action for summary possession, any sum of money which was payable at the time when the action for summary possession was commenced and the reasonable value of the use and occupation to the time when a writ of possession was issued and for any period of time with respect to which the agreement does not make any provision for payment of rent, including the time between the issuance of the writ and the landlord's actual recovery of the premises.

that there was no final judgment because there was not a “sum certain or a formula for mechanically ascertaining that sum.”) (The same principle applies to post-judgment interest.)

There is no statutory or rule provision permitting a judgment to be amended in this situation. Rule 59(c) of the Justice of the Peace Court Civil Rules provides that a motion to alter or amend a judgment shall be served and filed within 10 days after entry of the judgment and, similarly, the Court, on its own initiative may order a new trial within 10 days after judgment under Rule 59(b). These motions should be made within 10 days of judgment and their purpose is to permit a new trial or reargument to correct an error. “The manifest purpose of all Rule 59 motions is to afford the Trial Court an opportunity to correct errors prior to appeal...” *Board of Managers of the Delaware Criminal Justice Information System v. Gannett*, 2003 WL 1578170, WL op. at 4 (Del. Super.) Thus, Rule 59 does not provide the authority to amend a judgment to include the total amount of the per diem actually charged.

Similarly, there is no provision in Rule 60 of the Justice of the Peace Court Civil Rules for such an amendment of a judgment. Rule 60(a) permits correcting clerical errors, and the other subsections of Rule 60 address the vacating of a judgment, not a change in an existing judgment. Finally, 10 *Del. C.* § 4102, which permits amending judgments, applies to defects or imperfections in matters of form found in the record or proceedings.

Since none of these provisions provide the legal authority to amend a judgment in this situation and the judgment actually “includes” the post-judgment per diem rent, the proper method for quantifying the amount of post-judgment per diem rent for execution purposes is to specify the final amount on the levy and wage and garnishment forms, as discussed below.

4. The J.P. Civil Form No. 16 “Levy of Property (Attachment Fieri Facias)” and J.P. Civil Form No. 17 “Garnishment of Wages and/or Property (Attachment Fieri Facias)” have been amended to include the amount of the post-judgment per diem rent and the number of days for which it is being assessed. In addition, a statement by the plaintiff that the amounts listed are true to the best of their knowledge has been added to these forms. Further, J.P. Civil Form 17, “Garnishment of Wages and/or Property (Attachment Fieri Facias)”, has been amended to request the garnishee to provide the judgment debtor with a copy of the form. These changes should provide the judgment creditor with the necessary information concerning the calculation and final amount of the per diem. The printed versions of these forms are not yet available. (It is anticipated that the amended Garnishment Form, Civil Form 17, will be re-printed shortly – however, the Levy Form, Civil Form 16, will not be re-printed for some time.) In the meantime, clerks should provide landlords wishing to obtain post-judgment per diem amounts with electronic or printed copies of the appropriate execution form and obtain the same number of signed copies as in the past.
5. A hearing should not be held on the amount of the post-judgment per diem unless the defendant requests one or it appears that the amount requested is incorrect based on the date of the judgment and the date of the service of the writ of possession (and the plaintiff, after being notified, disputes the Court’s calculation).

6. Ordinarily, it would be expected that a hearing on the per diem, if needed, could be held prior to the time for a constable sale. However, even if that is not the case, a levy and constable sale may proceed. The Court should release the funds owed from the proceeds of the constable sale as usual, except that it should not release the amount requested for the post-judgment per diem until after the hearing is held.

PWG/crm
Attachments

cc: Hon. E. Norman Veasey
Hon. Henry duPont Ridgely
Hon. Alex J. Smalls
Hon. Chandlee Johnson Kuhn
Hon. Alicia Howard
Thomas W. Nagle
Anna A. Lewis
H. John Betts
Larry Sipple
Lyn Arnold
Debbie Long
Judy Gonce
All Justice of the Peace Courts
Law Libraries: New Castle County, Kent County, Sussex County
Widener University School of Law

**IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR _____ COUNTY
COURT NO. _____**

COURT ADDRESS:

CIVIL ACTION NO. _____

PLAINTIFF/JUDGMENT CREDITOR:

VS.

DEFENDANT/JUDGMENT DEBTOR:

Name: _____

Name: _____

Address: _____
(street, city, state, zip code)

Address: _____
(street, city, state, zip code)

Phone: _____

Phone: _____

LEVY OF PROPERTY (ATTACHMENT FIERI FACIAS)

PLEASE levy on the judgment debtor's property in the above named case.

NOTE: The specific property to be levied upon will be selected by the constable. However, the constable cannot levy upon a motor vehicle (including a mobile home) unless you provide the Certificate of Lien. **A CONSTABLE'S SALE WILL BE HELD FOLLOWING THE LEVY ONLY UPON YOUR REQUEST.**

_____ I have provided the Certificate of Lien for the judgment debtor's motor vehicle which is _____ make and _____ model with registration # _____.

THE AMOUNT NOW DUE on the judgment is as follows:

\$ _____ Original amount of judgment (excluding costs, attorneys' fees and pre-judgment interest)
\$ _____ Pre-judgment interest
\$ _____ Less total credits
\$ _____ Net
\$ _____ Plus post-judgment per diem rent of \$ _____ X _____ days (summary possession cases only)
\$ _____ Plus post-judgment interest at _____% per year
\$ _____ Plus court costs due, including costs for this form.
\$ _____ Plus attorneys' fees, if allowed by judgment.
\$ _____ **TOTAL DUE ON JUDGMENT**

DATE OF JUDGMENT: _____

The foregoing statements are true and correct to the best of my knowledge and belief.

DATE: _____

Signature of Plaintiff or Attorney

TO THE CONSTABLE: **YOU ARE ORDERED** to levy on the goods, chattels, rights, credits, money and effects of _____, the Defendant, to recover the amount due on the judgment.

TO THE DEFENDANT: **YOU ARE ORDERED** not to intentionally destroy, damage, sell or conceal the levied property. An order to hold a Constable's Sale may be entered in the Court noted above. See back of form for Defendant's Exemptions.

TO PLAINTIFF/JUDGMENT CREDITOR: Any special instructions should be attached. **YOU ARE RESPONSIBLE FOR NOTIFYING THE COURT WHEN JUDGMENT HAS BEEN SATISFIED (PAID IN FULL).** If you fail to do so, you must pay the judgment debtor a sum up to 1/2 of the judgment. 10 *Del.C.* § 9567.

IT IS SO ORDERED this _____ day of _____, 20____.

(SEAL)
Justice of the Peace

**IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR _____ COUNTY
COURT NO. _____**

COURT ADDRESS:

CIVIL ACTION NO. _____

PLAINTIFF/JUDGMENT CREDITOR:

VS.

DEFENDANT/JUDGMENT DEBTOR:

Name: _____

Name: _____

Address: _____

(street, city, state, zip code)

Address: _____

(street, city, state, zip code)

SERVE ON: _____

Employer/Garnishee Name

ADDRESS: _____

(street, city, state, zip code)

RETURN DATE: _____

SERVED ON: _____ (Date/Time)

CONSTABLE: _____

GARNISHMENT OF WAGES AND/OR PROPERTY(ATTACHMENT FIERI FACIAS)

PLEASE ISSUE A WRIT OF GARNISHMENT (Attachment Fieri Facias) on the judgment in the above case to be directed to the Employer/Garnishee named above. **THE AMOUNT NOW DUE** on the judgment is as follows:

\$ _____ Original amount of judgment (excluding costs, attorneys' fees and pre-judgment interest)

\$ _____ Plus Pre-judgment interest

\$ _____ Less total credits

\$ _____ Net

\$ _____ Plus post-judgment per diem rent of \$ _____ X _____ days (summary possession only)

\$ _____ Plus post-judgment interest at _____% per year.

\$ _____ Plus court costs due, including for this form.

\$ _____ Plus attorneys' fees, if allowed by judgment.

\$ _____ **TOTAL DUE ON JUDGMENT**

DATE OF JUDGMENT: _____

The foregoing statements are true and correct to the best of my knowledge and belief.

DATE: _____

Signature of Plaintiff or Attorney

TO THE CONSTABLE: **YOU ARE HEREBY ORDERED** to summon the Garnishee to answer this request for garnishment of wages of _____, the Defendant.

TO THE GARNISHEE: **YOU ARE HEREBY ORDERED TO WITHHOLD THE ATTACHABLE WAGES OF THE DEFENDANT/DEBTOR FOR ANY WORK WEEK OR OTHER PAY PERIOD AND ALL MONEY OR OTHER PROPERTY OF THE DEBTOR IN YOUR POSSESSION** until the judgment, interest, other charges and costs as specified in above are satisfied or until otherwise notified by this Court. To determine the amount of wages to withhold, see attached Justice of the Peace Civil Form No. 34. **RETURN THE ENCLOSED ANSWER TO THE COURT WITHIN 20 DAYS.**

You are further ordered to send the amount withheld directly to the Plaintiff/Creditor or his legal representative and not to the Court. All such wages, money, etc. must be held for the benefit of the Judgment/Creditor and may not be disbursed to the Judgment/Debtor except upon order of the Court. Federal and State exemptions may be available. **Please provide a copy of this order to the Judgment/Debtor.**

The judgment may be transferred from the Defendant to you if you fail to comply with this Order.

IT IS SO ORDERED this _____ day of _____, 20____.

Justice of the Peace (SEAL)